

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: November 28, 1997

TO: F. Rozier Sharp, Regional Director, Region 17

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Laborers, Local 495 (Hernandez Enterprises, Inc.), Case 17-CA-4996

This Section 8(b)(1)(A) case was submitted for advice on whether (1) the allegation concerning the failure to timely process Charging Party employee Towns' grievances is barred by Section 10(b) because Towns was on notice of the Union's conduct outside the 10(b) period; and (2) the Union otherwise violated its duty of fair representation by intentionally misleading Towns about the status of his grievances.

We conclude, in agreement with the Region, that it should dismiss the charge. First, it is not clear that the Union's failure to timely process Towns' grievances was due to anything more than mere negligence.⁽¹⁾ Second, it seems clear that any arguable violation is time barred, i.e., Towns was clearly notified, on two occasions outside the 10(b) period, that the International Representatives had "dropped the ball" on his grievances.

Third, we agree that the Union did not otherwise violate its duty of fair representation within the 10(b) period by intentionally misleading Towns about the status of his grievances. Rather, the Local Union Business Manager kept Towns well apprised of the fact that the Union was having problems processing his grievance, and that, in the Local's view, the International Representatives had "dropped the ball" on his grievances.⁽²⁾

Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

¹ We note that, immediately prior to the incident involving Towns' grievances, Towns had criticized the Union at an open Union meeting, viz., Towns had protested both the Union's negotiations strategy, and also the inclusion in the unit of the supervisor with whom Towns had the altercation leading to the filing of his grievances. However, there is no evidence that, as a result of this criticism, the Union harbored animus against Towns, and for that reason failed to pursue his grievances within contractually mandated time guidelines. In fact, it appears that it was the International Representatives, and not the Local, who failed to timely pursue Towns' grievances.

² Cf. *Church Charity Foundation*, 267 NLRB 974, 980 (1983) ("[the union] purposely kept [the employee] misinformed concerning his grievance because [the union] knew that it had not timely filed a grievance in [the employees'] behalf and knew that the Employer might properly refuse to hear such an untimely grievance"); *Auto Workers Local 417 (Falcon Industries)*, 245 NLRB 527 (1979) (willful failure to pursue grievance accompanied by willful concealment of that failure for many months despite repeated inquiries); *Service Employees Local 3036 (Linden Maintenance Corp.)*, 280 NLRB 995, 997 (1986) (continued nonaction, despite statements to the contrary, amounted to a willful failure to pursue a grievance).